

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

GEOFFREY ASHER,

Plaintiff,

vs.

MARK MCCLURE, *et al.*,

Defendants.

CIVIL ACTION FILE

NO. 2:08-CV-0035-WCO

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S
MOTION TO LIFT STAY**

COME NOW all Defendants in the above-styled action, by and through counsel of record, and show that Plaintiff's request to lift the stay in this case should be DENIED.

ARGUMENT AND CITATIONS TO AUTHORITY

In July 2008 the Court granted Defendants' motion to stay this action, based on the pendency of a criminal prosecution against Plaintiff in the Lumpkin County Superior Court. Order [Doc. 16]. Plaintiff now moves to lift the stay, contending that the criminal case is not moving swiftly enough, and speculating that one Defendant may leave the jurisdiction.¹

¹ Plaintiff's unsupported speculation about Sheriff McClure's potential future employment is without evidentiary support, and would not support dissolution of the stay even if true.

In reality the criminal case against Plaintiff is moving forward, and perhaps his motion to suppress would have been heard but for Plaintiff's criminal defense attorney's conflict notice and request for a continuance. Declaration of Thomas Wight at ¶¶7-8, 11. Plaintiff's criminal motion to suppress is scheduled for hearing on November 25, and the case appears as number 43 on an upcoming trial calendar. Declaration of Thomas Wight at ¶¶15.

In sum, the only evidence before the Court—ADA Wight's declaration—reveals that Plaintiff's request to lift the stay in this case is without merit. Plaintiff's own criminal defense counsel delayed his criminal case, and Plaintiff should not be permitted to profit from his own counsel's tactical decisions resulting in delayed prosecution.

CONCLUSION

Plaintiff having provided neither evidence nor a substantial reason to lift the stay in this case, Defendants request the Court to deny Plaintiff's motion.

Respectfully submitted this 12th day of November, 2008.

WILLIAMS, MORRIS & BLUM, LLC

/s/ Jason C. Waymire _____
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CERTIFICATION OF COMPLIANCE WITH L.R. 5.1(B).

Counsel for Defendants certifies that the foregoing Brief complies with the font and point size requirements of Local Rule 5.1(B).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing ***DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO LIFT STAY and DECLARATION OF THOMAS WIGHT*** upon all parties by electronic filing through the CM/ECF system in accordance with the United States District Court rules to:

Matt Karzen
Matt Karzen, LLC
191 E. Broad Street, Suite 311-A
Athens, Georgia 30601
mjkarzen@bellsouth.net

This 12 day of November, 2008.

WILLIAMS, MORRIS & BLUM, LLC

/s/ Jason C. Waymire
JASON C. WAYMIRE
Georgia Bar No. 742602
Attorney for Defendants